

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

Deborah Winningham,)	
Plaintiff,)	
)	
vs.)	No. 06-0568-CV-W-FJG
)	
Swift Transportation Co., Inc., et al.,)	
Defendants.)	

ORDER

Currently pending before the Court are the parties' objections to the deposition designations. The Court hereby rules as follows:

Defendants' Objections to Plaintiff's Designations

DR. IRA FISHMAN

		<u>Ruling:</u>
P. 9, l. 11-16	Object: Leading	Sustained
P. 13, l. 20-23	Object: Foundation, F.R.E. 901, F.R.E. 701. Counsel has not laid foundation for the witness' opinion with respect to plaintiff's range of motion limitations prior to the accident	Overruled
P. 14, l. 1-4	Object: Leading	Overruled
P. 15, l. 13-18	Object: Foundation, F.R.E. 901, F.R.E. 701	Overruled
P. 17, l. 2-5	Object: Foundation, F.R.E. 901, F.R.E. 701. Counsel has not established that the witness had any knowledge regarding whether or not plaintiff was compliant with the prescribed physical therapy.	Overruled
P. 18, l. 25 to p. 19, l. 4	Object: Leading	Overruled
P. 21, l. 10-11	Object: Foundation, F.R.E. 901, F.R.E. 701. Counsel has not laid adequate foundation for the witness to testify about the extent of plaintiff's alleged permanent partial disability.	Overruled
P.22, l.12-14	Object: Foundation, F.R.E. 901, F.R.E. 701 Counsel has not laid adequate foundation for the witness to testify regarding whether plaintiff's alleged injuries resulted in permanent disability.	Overruled
P. 23, l. 20-23	Object: Foundation, F.R.E. 901, F.R.E. 701. Counsel has not laid adequate foundation for the witness to testify	Overruled

regarding whether “all of the injuries we’ve discussed today” are the result of the accident. Numerous conditions and injuries were discussed throughout the course of Dr. Fishman’s deposition which were not the result of the accident in question. In fact, Dr. Fishman goes on to specifically testify that many of the injuries and conditions plaintiff suffers from are not related to the accident.

P. 24, l. 19-22	Object: Foundation, F.R.E. 901, F.R.E. 701. Counsel has not laid adequate foundation for the witness to testify that all of his opinions were within a reasonable degree of medical certainty. Dr. Fishman provided numerous opinions throughout the course of his deposition which were not within a reasonable degree of medical certainty.	Overruled
P. 24, l. 5-24	Object: Lack of Foundation, F.R.E. 701, F.R.E. 901. Defendants object to the designated testimony regarding plaintiff’s medical bills	Overruled

In defendants’ second set of objections to plaintiff’s amended designations (Doc. No. 77), defendants generally object to plaintiff designating additional deposition testimony not contained in their initial designations of deposition testimony of Dr. Ira. Fishman, D.O. The Court finds there is no evidence of prejudice to defendants. Therefore, the Court hereby **OVERRULES** defendants’ general objection.

Plaintiff’s Objections to Defendants’ Designations

DR. IRA FISHMAN

Ruling:

P. 25, l. 12-22	Object: Improperly injects issues of insurance coverage and is irrelevant	Overruled
P. 26, l. 6-23	Object: p. 26, line 23 irrelevant as to whether she was planning a lawsuit or had a lawsuit pending.	Overruled
P. 26, l. 24 to P. 32, l. 9	Object: Irrelevant as to whether she was planning a lawsuit or had a lawsuit pending	Overruled
P. 40, l. 9 to P. 41, l. 12	Object: Irrelevant and lacks Foundation	Overruled

IT IS SO ORDERED.

Date: 8/15/07
Kansas City, Missouri

S/ FERNANDO J. GAITAN, JR.
Fernando J. Gaitan, Jr.
Chief United States District Judge